

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SUSANA VERDUZCO,
Plaintiff,

v.

ST. MARY'S HIGH SCHOOL, et al.,
Defendants.

Case No. 2:23-CV-02269-KJM-CSK


ORDER GRANTING MODIFIED
STIPULATED PROTECTIVE ORDER

(ECF No. 32)

The Court has reviewed the parties' stipulated protective order below (ECF No. 32), and finds it comports with the relevant authorities and the Court's Local Rule. See L.R. 141.1. The Court APPROVES the protective order, subject to the following clarification.

The Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see *Bylin Heating Sys., Inc. v. Thermal Techs., Inc.*, 2012 WL 13237584, at *2 (E.D. Cal. Oct. 29, 2012) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed.

Dated: October 10, 2024


CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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ST. MARY'S HIGH SCHOOL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SUSANA VERDUZCO,) Case No. 2:23-CV-02269-KJM-CSK

Plaintiff,

VS.

ST. MARY'S HIGH SCHOOL, and
DOES 1 through 50, inclusive,

Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

1 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public disclosure and use
3 extends only to the limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
5 this Stipulated Protective Order does not entitle them to file confidential information under seal; L.R.
6 141 sets forth the procedures that must be followed and the standards that will be applied when a
7 party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
12 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of
13 Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
15 as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items that it
17 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
19 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
20 transcripts, and tangible things) that are produced or generated in disclosures or responses to
21 discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
23 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
24 consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel
26 does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
5 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
6 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
7 time limits for filing any motions or applications for extension of time pursuant to applicable law.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
10 or Non-Party that designates information or items for protection under this Order must take care to
11 limit any such designation to specific material that qualifies under the appropriate standards. The
12 Designating Party must designate for protection only those parts of material, documents, items, or
13 oral or written communications that qualify – so that other portions of the material, documents,
14 items, or communications for which protection is not warranted are not swept unjustifiably within
15 the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
17 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
18 encumber or retard the case development process or to impose unnecessary expenses and burdens on
19 other parties) expose the Designating Party to sanctions. If it comes to a Designating Party's
20 attention that information or items that it designated for protection do not qualify for protection, that
21 Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
22 designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
24 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
25 Discovery Material that qualifies for protection under this Order must be clearly so designated
26 before the material is disclosed or produced.

27 Designation in conformity with this Order requires:

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1 (a) For information in documentary form (e.g., paper or electronic documents,
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
3 Party affix the legend “CONFIDENTIAL” (or, alternatively, “CONFIDENTIAL PURSUANT TO
4 PROTECTIVE ORDER”) to each page that contains protected material. If only a portion or portions
5 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-Party
7 that makes original documents or materials available for inspection need not designate them for
8 protection until after the inspecting Party has indicated which material it would like copied and
9 produced. During the inspection and before the designation, all of the material made available for
10 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must determine which documents, or
12 portions thereof, qualify for protection under this Order. Then, before producing the specified
13 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that
14 contains Protected Material. If only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

17 (b) for testimony given in deposition or in other pretrial or trial proceedings,
18 that the Designating Party identify on the record all protected testimony, before the conclusion of the
19 deposition, hearing, or other proceeding or, alternatively, within thirty (30) days following written
20 notice from the deposition officer that the original transcript is available for reading, correcting, and
21 signing. The court reporter must be directed that pages of transcribed deposition testimony or
22 exhibits to depositions that reveal Protected Material must be separately bound and may not be
23 disclosed to anyone except as permitted under this Stipulated Protective Order and must be notified
24 by the Designating Party of any designation made after preparation of the transcript.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
27 container or containers in which the information or item is stored the “CONFIDENTIAL” legend.

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1 If only a portion or portions of the information or item warrant protection, the Producing Party, to
2 the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating Party's
5 right to secure protection under this Order for such material. Upon timely correction of a
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
7 accordance with the provisions of this Order.

8 5.4 Post-Order Designations. For qualifying information or items disclosed prior to
9 entry of this Stipulated Protective Order, any Party may designate the information or items as
10 Protected Material within thirty (30) days following entry by the court of this Order by either re-
11 serving the Protected Material with the "CONFIDENTIAL" legend thereon or identifying it by Bates
12 number(s) or other unique identifier. Upon timely designation, the Receiving Party must make
13 reasonable efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
19 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
20 confidentiality designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
23 by providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
25 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
26 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
27 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
28 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging

1 Party must explain the basis for its belief that the confidentiality designation was not proper and
 2 must give the Designating Party an opportunity to review the designated material, to reconsider the
 3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 4 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 5 has engaged in this meet and confer process first or establishes that the Designating Party is
 6 unwilling to participate in the meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 8 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
 9 days of the initial notice of challenge, unless another deadline is agreed to by the parties. Each such
 10 motion must be accompanied by a competent declaration affirming that the movant has complied
 11 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
 12 Designating Party to make such a motion including the required declaration within 21 days (or other
 13 agreed upon deadline) shall automatically waive the confidentiality designation for each challenged
 14 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
 15 designation at any time if there is good cause for doing so, including a challenge to the designation
 16 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision
 17 must be accompanied by a competent declaration affirming that the movant has complied with the
 18 meet and confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
 20 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 22 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
 23 retain confidentiality as described above, all parties shall continue to afford the material in question
 24 the level of protection to which it is entitled under the Producing Party's designation until the court
 25 rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 28 produced by another Party or by a Non-Party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
2 the categories of persons and under the conditions described in this Order. When the litigation has
3 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and in a
6 secure manner that ensures that access is limited to the persons authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
8 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
9 information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record. Any Outside Counsel of Record who is associated or
12 substituted into the case after entry of this Stipulated Protective Order must sign a copy of this Order
13 promptly and before he or she may be entitled to receive any discovery.

14 (b) the officers, directors, and employees (including House Counsel) of the
15 Receiving Party to whom disclosure is reasonably necessary for this litigation;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
17 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and their Counsel (if any), who have signed the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
24 by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material must be separately bound by the court reporter and may not be disclosed to
26 anyone except as permitted under this Stipulated Protective Order.

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(g) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(h) any mediator agreed upon by the Parties and his or her staff; and

(i) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

1. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.
4. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
2 LITIGATION

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
5 Parties in connection with this litigation is protected by the remedies and relief provided by this
6 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
7 additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce a
9 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with
10 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

11 (1) promptly notify in writing the Requesting Party and the Non-Party that
12 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated
14 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
15 description of the information requested; and

16 (3) make the information requested available for inspection by the Non-
17 Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court
19 within 14 days of receiving the notice and accompanying information, the Receiving Party may
20 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-
21 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
22 possession or control that is subject to the confidentiality agreement with the Non-Party before a
23 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden
24 and expense of seeking protection in this court of its Protected Material.

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
28 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized

disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with L.R. 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Receiving Party's

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request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: October 2, 2024

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

By: /s/ Lisa Blanco Jimenez
LISA BLANCO JIMENEZ

Attorneys for Defendant ST. MARY’S HIGH SCHOOL

Dated: October 2, 2024

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